

111TH CONGRESS
2D SESSION

S. 3754

To provide funding for the settlement of lawsuits against the Federal Government for discrimination against Black Farmers and the mismanagement of Native American trust accounts.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2010

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide funding for the settlement of lawsuits against the Federal Government for discrimination against Black Farmers and the mismanagement of Native American trust accounts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pigford and Individual
5 Indian Money Account Litigation Settlement Act of
6 2010”.

1 **SEC. 2. PIGFORD SETTLEMENT AGREEMENT.**

2 (a) There is hereby appropriated to the Department
3 of Agriculture, \$1,150,000,000, to remain available until
4 expended, to carry out the terms of a Settlement Agree-
5 ment (“such Settlement Agreement”) executed by In re
6 Black Farmers Discrimination Litigation, No. 08–511
7 (D.D.C.) that is approved by a court order that has be-
8 come final and nonappealable, and that is comprehensive
9 and provides for the final settlement of all remaining
10 Pigford claims (“Pigford claims”), as defined in section
11 14012(a) of Public Law 110–246. The funds appropriated
12 herein for such Settlement Agreement are in addition to
13 the \$100,000,000 in funds of the Commodity Credit Cor-
14 poration (CCC) that section 14012 made available for the
15 payment of Pigford claims and are available only after
16 such CCC funds have been fully obligated. The use of the
17 funds appropriated herein shall be subject to the express
18 terms of such Settlement Agreement. If any of the funds
19 appropriated herein are not used for carrying out such
20 Settlement Agreement, such funds shall be returned to the
21 Treasury and shall not be made available for any purpose
22 related to section 14012, for any other settlement agree-
23 ment executed In re Black Farmers Discrimination Litiga-
24 tion, No. 08–511 (D.D.C.), or for any other purpose. If
25 such Settlement Agreement is not executed and approved
26 as provided above, then the sole funding available for

1 Pigford claims shall be the \$100,000,000 of funds of the
 2 CCC that section 14012 made available for the payment
 3 of Pigford claims.

4 (b) Nothing in this section shall be construed as re-
 5 quiring the United States, any of its officers or agencies,
 6 or any other party to enter into such Settlement Agree-
 7 ment or any other settlement agreement.

8 (c) Nothing in this section shall be construed as cre-
 9 ating the basis for a Pigford claim.

10 (d) Section 14012 of the Food, Conservation, and
 11 Energy Act of 2008 (Public Law 110–246; 122 Stat.
 12 2209) is amended—

13 (1) in subsection (c)(1)—

14 (A) by striking “subsection (h)” and in-
 15 serting “subsection (g)”; and

16 (B) by striking “subsection (i)” and insert-
 17 ing “subsection (h)”;

18 (2) by striking subsection (e);

19 (3) in subsection (g), by striking “subsection
 20 (f)” and inserting “subsection (e)”;

21 (4) in subsection (i)—

22 (A) by striking “(i)” and all that follows
 23 through “Of the funds” and inserting the fol-
 24 lowing:

25 “(h) FUNDING.—Of the funds”;

1 (B) by striking “subsection (g)” and in-
 2 serting “subsection (f)”; and

3 (C) by striking paragraph (2);

4 (5) by striking subsection (j); and

5 (6) by redesignating subsections (f), (g), (h),
 6 and (k) as subsections (e), (f), (g), and (i), respec-
 7 tively.

8 **SEC. 3. THE INDIVIDUAL INDIAN MONEY ACCOUNT LITIGA-**
 9 **TION SETTLEMENT ACT OF 2010.**

10 (a) DEFINITIONS.—In this Act:

11 (1) AMENDED COMPLAINT.—The term
 12 “Amended Complaint” means the Amended Com-
 13 plaint attached to the Settlement.

14 (2) LAND CONSOLIDATION PROGRAM.—The
 15 term “Land Consolidation Program” means a pro-
 16 gram conducted in accordance with the Settlement
 17 and the Indian Land Consolidation Act (25 U.S.C.
 18 2201 et seq.) under which the Secretary may pur-
 19 chase fractional interests in trust or restricted land.

20 (3) LITIGATION.—The term “Litigation” means
 21 the case entitled *Elouise Cobell et al. v. Ken Salazar*
 22 *et al.*, United States District Court, District of Co-
 23 lumbia, Civil Action No. 96–1285 (JR).

24 (4) PLAINTIFF.—The term “Plaintiff” means a
 25 member of any class certified in the Litigation.

1 (5) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior.

3 (6) SETTLEMENT.—The term “Settlement”
4 means the Class Action Settlement Agreement dated
5 December 7, 2009, in the Litigation, as modified by
6 the parties to the Litigation.

7 (7) SIDE AGREEMENT ON ATTORNEYS’ FEES,
8 EXPENSES, AND COSTS.—The term “Side Agreement
9 on Attorneys’ Fees, Expenses, and Costs” means an
10 agreement dated December 7, 2009, between Class
11 Counsel (as defined in the Settlement) and the De-
12 fendants (as defined in the Settlement) relating to
13 attorneys’ fees, expenses, and costs incurred by
14 Class Counsel in connection with the Litigation and
15 implementation of the Settlement.

16 (8) TRUST ADMINISTRATION CLASS.—The term
17 “Trust Administration Class” means the Trust Ad-
18 ministration Class as defined in the Settlement.

19 (b) PURPOSE.—The purpose of this section is to au-
20 thorize the Settlement.

21 (c) AUTHORIZATION.—The Settlement is authorized,
22 ratified, and confirmed.

23 (d) JURISDICTIONAL PROVISIONS.—

24 (1) IN GENERAL.—Notwithstanding the limita-
25 tion of jurisdiction of district courts contained in

1 section 1346(a)(2) of title 28, United States Code,
 2 the United States District Court for the District of
 3 Columbia shall have jurisdiction over the claims as-
 4 serted in the Amended Complaint for purposes of
 5 the Settlement.

6 (2) CERTIFICATION OF TRUST ADMINISTRATION
 7 CLASS.—

8 (A) IN GENERAL.—Notwithstanding the
 9 requirements of the Federal Rules of Civil Pro-
 10 cedure, the court overseeing the Litigation may
 11 certify the Trust Administration Class.

12 (B) TREATMENT.—On certification under
 13 subparagraph (A), the Trust Administration
 14 Class shall be treated as a class under Federal
 15 Rule of Civil Procedure 23(b)(3) for purposes
 16 of the Settlement.

17 (e) TRUST LAND CONSOLIDATION.—

18 (1) TRUST LAND CONSOLIDATION FUND.—

19 (A) ESTABLISHMENT.—On final approval
 20 (as defined in the Settlement) of the Settle-
 21 ment, there shall be established in the Treasury
 22 of the United States a fund, to be known as the
 23 “Trust Land Consolidation Fund”.

24 (B) AVAILABILITY OF AMOUNTS.—
 25 Amounts in the Trust Land Consolidation

1 Fund shall be made available to the Secretary
 2 during the 10-year period beginning on the date
 3 of final approval of the Settlement—

4 (i) to conduct the Land Consolidation
 5 Program; and

6 (ii) for other costs specified in the
 7 Settlement.

8 (C) DEPOSITS.—

9 (i) IN GENERAL.—On final approval
 10 (as defined in the Settlement) of the Set-
 11 tlement, the Secretary of the Treasury
 12 shall deposit in the Trust Land Consolida-
 13 tion Fund \$2,000,000,000 of the amounts
 14 appropriated by section 1304 of title 31,
 15 United States Code.

16 (ii) CONDITIONS MET.—The condi-
 17 tions described in section 1304 of title 31,
 18 United States Code, shall be considered to
 19 be met for purposes of clause (i).

20 (D) TRANSFERS.—In a manner designed
 21 to encourage participation in the Land Consoli-
 22 dation Program, the Secretary may transfer, at
 23 the discretion of the Secretary, not more than
 24 \$60,000,000 of amounts in the Trust Land
 25 Consolidation Fund to the Indian Education

1 Scholarship Holding Fund established under
2 paragraph 2.

3 (2) INDIAN EDUCATION SCHOLARSHIP HOLDING
4 FUND.—

5 (A) ESTABLISHMENT.—On final approval
6 (as defined in the Settlement) of the Settle-
7 ment, there shall be established in the Treasury
8 of the United States a fund, to be known as the
9 “Indian Education Scholarship Holding Fund”.

10 (B) AVAILABILITY.—Notwithstanding any
11 other provision of law governing competition,
12 public notification, or Federal procurement or
13 assistance, amounts in the Indian Education
14 Scholarship Holding Fund shall be made avail-
15 able, without further appropriation, to the Sec-
16 retary to contribute to an Indian Education
17 Scholarship Fund, as described in the Settle-
18 ment, to provide scholarships for Native Ameri-
19 cans.

20 (3) ACQUISITION OF TRUST OR RESTRICTED
21 LAND.—The Secretary may acquire, at the discre-
22 tion of the Secretary and in accordance with the
23 Land Consolidation Program, any fractional interest
24 in trust or restricted land.

1 (4) TREATMENT OF UNLOCATABLE PLAIN-
 2 TIFFS.—A Plaintiff the whereabouts of whom are
 3 unknown and who, after reasonable efforts by the
 4 Secretary, cannot be located during the 5-year pe-
 5 riod beginning on the date of final approval (as de-
 6 fined in the Settlement) of the Settlement shall be
 7 considered to have accepted an offer made pursuant
 8 to the Land Consolidation Program.

9 (f) TAXATION AND OTHER BENEFITS.—

10 (1) INTERNAL REVENUE CODE.—For purposes
 11 of the Internal Revenue Code of 1986, amounts re-
 12 ceived by an individual Indian as a lump sum or a
 13 periodic payment pursuant to the Settlement—

14 (A) shall not be included in gross income;
 15 and

16 (B) shall not be taken into consideration
 17 for purposes of applying any provision of the
 18 Internal Revenue Code that takes into account
 19 excludable income in computing adjusted gross
 20 income or modified adjusted gross income, in-
 21 cluding section 86 of that Code (relating to So-
 22 cial Security and tier 1 railroad retirement ben-
 23 efits).

24 (2) OTHER BENEFITS.—Notwithstanding any
 25 other provision of law, for purposes of determining

1 initial eligibility, ongoing eligibility, or level of bene-
 2 fits under any Federal or federally assisted program,
 3 amounts received by an individual Indian as a lump
 4 sum or a periodic payment pursuant to the Settle-
 5 ment shall not be treated for any household member,
 6 during the 1-year period beginning on the date of re-
 7 ceipt—

8 (A) as income for the month during which
 9 the amounts were received; or

10 (B) as a resource.

11 (g) INCENTIVE AWARDS AND AWARD OF FEES, EX-
 12 PENSES, AND COSTS UNDER SETTLEMENT AGREE-
 13 MENT.—

14 (1) IN GENERAL.—The Court shall determine
 15 the amount to which the Plaintiffs in the Litigation
 16 may be entitled for incentive awards and for attor-
 17 neys' fees, expenses, and costs—

18 (A) in accordance with controlling law, in-
 19 cluding (with respect to attorneys' fees, ex-
 20 penses, and costs) any applicable rule of law re-
 21 quiring counsel to produce contemporaneous
 22 time, expense, and cost records in support of a
 23 motion for such time, expense, and cost records;
 24 and

1 (B) giving due consideration to the special
2 status of Class Members (as defined in the Set-
3 tlement) as beneficiaries of a federally created
4 and administered trust.

5 (2) NOTICE OF SIDE AGREEMENT ON ATTOR-
6 NEYS' FEES, EXPENSES, AND COSTS.—The descrip-
7 tion of the request of Class Counsel for an amount
8 of attorneys' fees, expenses, and costs required
9 under paragraph C.1.d. of the Settlement shall in-
10 clude a description of all material provisions of the
11 Side Agreement on Attorneys' Fees, Expenses, and
12 Costs.

13 (h) SELECTION OF 1 OR MORE QUALIFYING
14 BANKS.—The Court, in exercising the discretion of the
15 Court to approve the selection of any proposed Qualifying
16 Bank (as defined in the Settlement) under paragraph A.1.
17 of the Settlement, may consider any factors or cir-
18 cumstances regarding the proposed Qualifying Bank that
19 the Court determines to be appropriate to protect the
20 rights and interests of Class Members (as defined in the
21 Settlement) in the funds to be deposited in the Settlement
22 Account (as defined in the Settlement).

23 (i) TRUST LAND CONSOLIDATION FUND.—

24 (1) CONSULTATION.—In implementing para-
25 graph F. of the Settlement, the Secretary shall con-

1 sult with federally recognized Indian tribes with re-
2 spect to—

3 (A) prioritizing and selecting tracts of land
4 for consolidation of fractionated interests; and

5 (B) otherwise implementing the Settlement
6 with regard to consolidation of fractionated in-
7 terests under the Settlement.

8 (2) CONTRACTING AND COMPACTING.—Not-
9 withstanding any provision of the Indian Land Con-
10 solidation Act (25 U.S.C. 2201 et seq.), the Sec-
11 retary shall implement paragraph F. of the Settle-
12 ment through contracts or compacts under titles I
13 and IV of the Indian Self-Determination and Edu-
14 cation Assistance Act (25 U.S.C. 450 et seq.).

15 (j) TRUST ADMINISTRATION CLASS ADJUST-
16 MENTS.—

17 (1) IN GENERAL.—In addition to any amounts
18 deducted from the Accounting/Trust Administration
19 Fund under paragraph E.4.b.2. of the Settlement,
20 the Court shall require the Claims Administrator (as
21 defined in the Settlement) to set aside, from the
22 funds paid into the Accounting/Trust Administration
23 Fund (as defined in the Settlement) pursuant to
24 paragraph E.2.a. of the Settlement, \$50,000,000 for

1 making equitable adjustments to the payments to
2 members of the Trust Administration Class

3 (2) PURPOSE OF ADJUSTMENTS.—The purpose
4 of the adjustments under this subsection is to pro-
5 vide additional compensation to any member of the
6 Trust Administration Class who demonstrates that
7 the pro rata formula calculated under paragraph
8 E.4.b.(3) of the Settlement does not provide fair
9 compensation to such member of that class.

10 (3) PROCEDURES.—Except as provided in para-
11 graph (5), the procedures, manner, sufficiency of
12 proof, and other requirements for members of the
13 Trust Administration Class to receive adjustments
14 under this subsection shall be established by, and be
15 within the discretion of, the Court.

16 (4) AMOUNT OF ADJUSTMENTS.—Whether a re-
17 quested adjustment under this subsection should be
18 made and the amount of any such adjustment shall
19 be within the discretion of the Court and not subject
20 to appeal.

21 (5) TIMING OF ADJUSTMENTS.—Any adjust-
22 ment payments authorized under this subsection
23 shall be distributed after payments have been made
24 to class members under paragraphs E.3. and 4. of
25 the Settlement.

1 (6) REMAINING FUNDS.—Any funds remaining
 2 in the amount set aside under paragraph (1) after
 3 completing the payments of equitable adjustments
 4 under this subsection shall be distributed to all
 5 members of the Trust Administration Class in ac-
 6 cordance with the pro rata percentages calculated
 7 for the members of that class under paragraph
 8 E.4.b.(3) of the Settlement.

9 (7) SPECIAL MASTER.—

10 (A) IN GENERAL.—At the discretion of the
 11 Court, the determination of the amount of equi-
 12 table adjustments under this subsection may be
 13 made by the special master appointed under the
 14 Settlement.

15 (B) REVIEW AND APPROVAL.—Any adjust-
 16 ments made by the special master under sub-
 17 paragraph (A) shall be subject to the review of
 18 the Court.

19 (k) APPOINTEES TO SPECIAL BOARD OF TRUST-
 20 EES.—The 2 members of the special board of trustees to
 21 be selected by the Secretary under paragraph G.3. of the
 22 Settlement shall be selected only after consultation with,
 23 and after considering the names of possible candidates of-
 24 fered by, federally recognized Indian tribes.

1 **SEC. 4. USE OF STIMULUS FUNDS TO OFFSET SPENDING.**

2 (a) IN GENERAL.—The unobligated balance of each
3 amount appropriated or made available under the Amer-
4 ican Recovery and Reinvestment Act of 2009 (Public Law
5 111–5; 123 Stat. 115) (other than under title X of division
6 A of that Act) is rescinded, on a pro rata basis, by an
7 aggregate amount that equals the amounts necessary to
8 offset any net increase in spending or foregone revenues
9 resulting from this Act and the amendments made by this
10 Act.

11 (b) REPORT.—The Director of the Office of Manage-
12 ment and Budget shall submit to each congressional com-
13 mittee the amounts rescinded under subsection (a) that
14 are within the jurisdiction of the committee.

○